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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

craigslist, Inc., a Delaware corporation,

Plaintiff,

v.

Christopher Meyer; Sean Meyer; XLR
Publications, Inc., a Delaware corporation;
John Doe d/b/a cladgenius.com; John Doe
d/b/a caposter.net; John Doe d/b/a
pvagenius.com; and Does 7 through 25,
inclusive,

Defendants.

Case No. CV 09-04737 MMC

**~~AMENDED [PROPOSED]~~ ORDER
GRANTING PLAINTIFF CRAIGSLIST,
INC.'S MOTION FOR DEFAULT
JUDGMENT AGAINST DEFENDANTS
CHRISTOPHER MEYER, SEAN MEYER
AND XLR PUBLICATIONS, INC.;**
VACATING HEARING

Plaintiff craigslist, Inc.'s ("craigslist") Motion for Default Judgment against Defendants

Christopher Meyer, Sean Meyer and XLR Publications, Inc. (collectively "Defendants") came

before the Court on February 18, 2011, in Courtroom 7, 19th Floor, the Honorable Maxine M.

Chesney presiding. Having jurisdiction over this suit, having reviewed the moving papers, any

opposing and reply papers, and all supporting declarations and exhibits filed with the Court, ~~and~~

~~having heard the arguments of counsel~~, the Court GRANTS Plaintiff craigslist, Inc.'s Motion for

1 Default Judgment against Defendants Christopher Meyer, Sean Meyer and XLR Publications,
2 Inc. Accordingly, the hearing scheduled for February 18, 2011 is hereby VACATED.

3 **RATIONALE OF DECISION**

4 **I. BACKGROUND**

5 **A. Factual Allegations**

6 In its Second Amended Complaint (“SAC”), filed on December 12, 2010, Electronic Case
7 Filing Docket Entry (“DE”) 45, Plaintiff craigslist alleges as follows:

8 Plaintiff craigslist owns and operates the website www.craigslist.org, which provides,
9 *inter alia*, an Internet-based local classified ad forum and service. The craigslist website allows
10 users to post classified ads on webpages for a particular geographic area and within a specific
11 category of products or services within that geographic area. SAC ¶¶ 30, 43. To restrict access to
12 its webpages and protect its services, craigslist requires users to agree to its online Terms of Use
13 (“TOU”), and employs technological security measures to enforce the TOU and to prohibit
14 unauthorized access and use of craigslist webpages and services. *Id.* ¶¶ 49, 55-67. The TOU
15 grant users a limited, revocable, nonexclusive license to access the craigslist website and use
16 craigslist’s services. *Id.* ¶ 39. Specifically, the TOU prohibit posting advertisements on behalf of
17 others, accessing the craigslist site to facilitate posting advertisements on behalf of others, using a
18 Posting Agent (a third-party agent or service that offers to post content on the website on behalf
19 of others), and using any automated device or computer program that enables posting without
20 each posting being entered manually. *Id.* ¶ 41. craigslist’s website has a unique and distinctive
21 design that is meant to be easy to understand and easy to use. *Id.* ¶¶ 68-69. craigslist’s website is
22 a work of authorship protected by copyright law, and craigslist has registered copyrights in its
23 website. *Id.* ¶¶ 72-75.

24 Defendants, operating the websites and businesses at www.cladgenius.com,
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1 www.pvagenius.com, and www.pvasuperman.com, develop, advertise, and sell software to
 2 automate posting ads on craigslist and circumvent craigslist's security measures — in violation of
 3 the TOU, craigslist's intellectual property rights, and other rights under the law. *Id.* ¶ 84.
 4 Specifically, Defendants develop, offer, market and sell software, called CLAD Genius, and other
 5 automated devices and related services through their interactive websites www.cladgenius.com,
 6 and which redirects to Buxbaum Decl. ¶ 6.
 7 ~~www.pvagenius.com, and www.pvasuperman.com.~~ *Id.* ¶ 84; The CLAD Genius software
 8 enables the automated posting of ads on craigslist (i.e., posting without each ad being entered
 9 manually), including circumventing craigslist security measures to do so. *Id.* ¶ 84. The Pro and
 10 Lite versions of the CLAD Genius software include the "Craigslist CAPTCHA Entry" feature that
 11 allows users to use separately purchased CAPTCHA credits to bypass the craigslist CAPTCHA
 12 security measure. *Id.* ¶ 88. Defendants' CLAD Genius Pro also includes the PVA Creator
 13 feature that creates craigslist phone verified accounts. *Id.* ¶ 89. Through the websites
 14 www.pvagenius.com and www.pvasuperman.com, Defendants sell phone verified accounts
 15 Sargent Decl. Ex. 3.
 16 ("PVAs") for use in circumventing craigslist's phone verification security measures. *Id.* ¶ 92;
 17

17 **B. Procedural History**

18 craigslist filed its original Complaint on October 5, 2009. DE 1. On February 26, 2010,
 19 craigslist filed its First Amended Complaint, naming Christopher Meyer, Sean Meyer and XLR
 20 Publications, Inc. as Defendants. DE 19. After being served, Defendants failed to respond and
 21 the Clerk of the Court entered Default against Defendants on August 19, 2010. DE 35. On
 22 December 2, 2010, craigslist filed its Second Amended Complaint and promptly served it on
 23 Defendants. DE 45, 46, 47. Defendants again failed to respond and Default was entered on
 24 December 28, 2010. DE 50.

26 Presently before the Court is Plaintiff craigslist's Motion for Default Judgment against
 27 Defendants Christophe Meyer, Sean Meyer and XLR Publications, Inc.
 28

II. STANDARDS

Once Default has been entered, the Court may enter a Default Judgment against defendants under Fed. R. Civ. P. 55(b). *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). The Ninth Circuit has enumerated the following factors for a district court to consider when determining whether to grant default judgment:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id.

III. DISCUSSION

Plaintiff craigslist moves the Court for entry of default judgment against Defendants on the ground that Defendants have failed to appear in this action.

A. Default Judgment

It is in the Court's discretion to grant a default judgment under Fed. R. Civ. P. 55(b). *Eitel*, 782 F.2d at 1471-72. In determining whether it is appropriate to grant a default judgment the Court applies the *Eitel* factors.

First, Defendants have failed to appear or take any action in this matter. Defendants have made no showing of excusable neglect. If default judgment is not granted, craigslist would suffer prejudice in that it would be without recourse to prevent Defendants from infringing craigslist's rights in the future and without recourse to recover for the harm and damages Defendants have caused craigslist already. *Elektra Enter. Group v. Avery*, No. CIV S-06-2541 WBS EFB, 2007 WL 2023545, at *1 (E.D. Cal. July 11, 2007). The court finds that Defendant's failure to demonstrate excusable neglect combined with the possibility of prejudice to craigslist favors default judgment.

1 Second, once the Clerk enters default the well-pled factual allegations regarding liability
2 are taken as true. *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002). Here
3 default was entered against Defendants on December 28, 2010. DE 50. After reviewing the
4 SAC, the Court finds craigslist has adequately alleged violations of the Digital Millennium
5 Copyright Act, 17 U.S.C. § 1201, *et seq.*, the Computer Fraud and Abuse Act, 18 U.S.C. § 1030,
6 California Penal Code § 502, breach of contract, inducing breach of contract, intentional
7 interference with contractual relations, and fraud. Since the allegations of the Complaint are
8 taken as true, there is no possibility of a dispute concerning material facts. Consequently, all of
9 these factors favor entry of default judgment.
10

11 The sum of money at stake is not inconsequential, but neither is the harm caused by
12 Defendants' conduct. Plaintiff craigslist seeks monetary damages in an amount between
13 \$455,800 and \$5,697,500. Plaintiff craigslist also seeks \$135,159.80 in attorneys' fees and costs.
14 While the damages sought are significant, they are not excessive in light of the alleged conduct of
15 Defendants. Therefore, the Court finds that this factor favors entry of default judgment.
16

17 In summary, the Court finds that the Eitel factors weigh in favor of granting default
18 judgment. Accordingly, the Court GRANTS Plaintiff craigslist's Motion for Default Judgment.
19

20 **B. Remedy**

21 Plaintiff craigslist moves for the following remedies: (1) statutory damages, (2) injunctive
22 relief, (3) an order directing the transfer of domain names that Defendants use to conduct their
23 illegal craigslist-related activities, and (4) an award of attorneys' fees and costs.

24 **1. Statutory Damages Under the Digital Millennium Copyright Act**

25 The Court must determine what amount, if any, in statutory damages under the DMCA
26 craigslist is entitled to. The DMCA allows a successful plaintiff to recover an award of statutory
27 damages in lieu of actual damages of between \$200 and \$2,500 per act of circumvention, device,
28

1 component, offer, or performance of service. *See* 17 U.S.C. § 1203(c)(3)(A). Courts have wide
 2 discretion to determine the appropriate level of statutory damages within this range. *Peer Int'l*
 3 *Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990).

4 In the course of its damages discovery, craigslist received transaction logs from Plimus, a
 5 payment processor used by Defendants, for sales related to cladgenius.com and pvagenius.com.
 6 Excerpts of the Plimus transaction logs are attached as Sargent Decl. Exs. 6-7. This information
 7 shows that Defendants sold at least 496 copies of CLADGenius: Pro software containing both
 8 CAPTCHA and phone verification circumvention components, at least 67 copies of CLAD
 9 Genius: Lite containing CAPTCHA circumvention components, and at least 1,220 phone
 10 verification circumvention devices through their website pvagenius.com. Based on this evidence,
 11 the Court finds that Defendants sold at least 563 CAPTCHA circumvention components or
 12 devices and 1,716 components or devices for circumventing craigslist's phone verification
 13 system.
 14

15 Therefore, the Court concludes that Defendants sold at least 2,279 components or devices
 16 that circumvent the security measures protecting the copyright-protected portions of craigslist's
 17 website. The Court also finds that an award of statutory damages ^{in the amount of \$750 per component or device} ~~at the maximum end of the~~
 18 ~~range~~ is warranted by Defendants' deliberate disregard of craigslist's rights, and because
 19 Defendants have refused to cease their injurious activities. Accordingly, the Court awards
 20 \$1,709,250
 21 craigslist statutory damages under the DMCA in the amount of ~~\$5,697,500~~.
 22

23 2. Injunctive Relief

24 Plaintiff craigslist moves for a permanent injunction pursuant to the CFAA, ^{18 U.S.C. § 1030(g)} ~~15 U.S.C. §~~
 25 ~~1116(a)~~ and the DMCA, 17 U.S.C. § 1203(b)(1).

26 It is appropriate to issue an injunction as part of a default judgment. *Elektra Ent. Group*
 27 *Inc. v. Crawford*, 226 F.R.D. 388, 393-94; *Jackson v. Sturkie*, 255 F. Supp. 2d 1096, ¹¹⁰³ ~~1011~~ (N.D.
 28

Cal. 2003). To obtain a permanent injunction, a plaintiff must show “(1) that is has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *Geertson Seed Farms v. Johanns*, 570 F.3d 1130, 1136 (9th Cir. 2009).

Here, Plaintiff craigslist has alleged that Defendants’ conduct has damaged craigslist, and caused and continues to cause irreparable and incalculable harm and injury to craigslist. SAC ¶¶ 110-118, 128-29. Moreover, craigslist has suffered lost reputation and goodwill and has lost users as frustration with the impacts from Defendants’ misconduct has grown and craigslist has struggled to stop them. *Id.* ¶¶ 114-15. craigslist contends that if not permanently enjoined, Defendants will continue to violate craigslist’s rights. Consequently, the Court finds that injunctive relief is appropriate under the circumstances.

Accordingly, the Court GRANTS craigslist’s request for a permanent injunction.

3. Transfer of Domain Names

Plaintiff craigslist moves for an order directing the transfer of domain names that Defendants use to conduct their illegal craigslist-related activities.

Where it is likely that Defendants will continue to use websites and/or domains to exacerbate the harm to a plaintiff, courts have used their inherent authority to enforce their own orders and ordered the transfer of the domain names in the event the Court finds it likely that a defendant will not comply with the court’s ordered injunctive relief. *See Xcentric Ventures, L.L.C. v. Elizabeth Arden*, No. 2:08-cv-2299-HRH (D. Ariz. October 22, 2009) (Judgment). Furthermore, the registrars of the domain names at issue have agreed through their contractual obligations with The Internet Corporation for Assigned Names and Numbers (“ICANN”) that

they will comply with a court order directing the cancellation, transfer or change in domain names. Internet Corp. for Assigned Names and Numbers, UDRP ¶ 3(b) (Oct. 24, 1999), *available at* <http://www.icann.org/en/dndr/udrp/policy.htm> (last visited Oct. 29, 2010)

In light of the fact that Defendants have persisted in operating their craigslist-related websites, and are likely to ignore an injunction against the use of such domains, the Court finds that it is appropriate to order the transfer of the relevant domain names to craigslist.

Accordingly the Court orders the transfer to craigslist within 10 days of receiving notice of this Order the domain names “cladgenius.com,” “pvagenius.com,” “pvasuperman.com” and all other domain names owned, operated, or registered by Defendants that contain “cl,” “craig” or “craigslist” or that are used to offer or sell craigslist telephone verified accounts, CAPTCHA solving products or services, or products or services that permit the posting of content on craigslist without each ad being manually posted by the user.

4. Attorneys’ Fees and Costs

Plaintiff craigslist moves for an award of attorneys’ fees and costs.

A court may, in its discretion, “award reasonable attorney’s fees to the prevailing party.” 17 U.S.C. § 1203(b)(5). Here, Plaintiff craigslist requests attorneys’ fees totaling \$132,115.73 and costs totaling \$3,044.07. The fees include work related to pleadings, investigation of Defendants’ activities, service, due to Defendants’ efforts to evade detection, and motion practice. The Court finds the requested fees and costs reasonable in light of the work performed.

Accordingly, the Court awards attorneys’ fees and cost in the amount of \$135,159.80.

IV. CONCLUSION

IT IS HEREBY ORDERED THAT:

A. Plaintiff craigslist, Inc.’s Motion for Default Judgment against Defendants Christopher Meyer, Sean Meyer and XLR Publications, Inc. is granted.

1 B. Defendants Christopher Meyer, Sean Meyer and XLR Publications, Inc. and their
 2 agents, servants, employees, attorneys, affiliates, distributors, successors and assigns, and any
 3 other persons acting in concert or in participation with them are now and forever enjoined from:

4 (a) Manufacturing, developing, creating, adapting, modifying, exchanging,
 5 offering, distributing, selling, providing, importing, trafficking in, or using any automated device
 6 or computer program (including, but not limited to, any technology, product, service, device,
 7 component, or part thereof) that enables postings on craigslist without each posting being entered
 8 manually;

9 (b) Manufacturing, developing, creating, adapting, modifying, exchanging,
 10 offering, distributing, selling, providing, importing, making available, trafficking in, or using
 11 content that uses automated means (including, but not limited to, spiders, robots, crawlers, data
 12 mining tools, and data scraping tools) to download or otherwise obtain data from craigslist;

13 ~~(c) Engaging in any activity that disrupts, diminishes the quality of, interferes~~
 14 ~~with the performance of, or impairs the functionality of craigslist's services or the craigslist~~
 15 ~~website;~~

16 (d) Copying, distributing, displaying, creating derivative works or otherwise
 17 using protected elements of craigslist's copyrighted website (located at www.craigslist.org),
 18 including, but not limited to, the website's post to classifieds, account registration and account log
 19 in expressions and compilations, and from inducing, encouraging, causing or materially
 20 contributing to any other person or entity doing the same;

21 (e) Circumventing technological measures that control access to craigslist's
 22 copyrighted website and/or portions thereof (including, but not limited to, CAPTCHAs and RE-
 23 CAPTCHAs), and from inducing, encouraging, causing or materially contributing to any other
 24 person or entity doing the same;

25 (f) Manufacturing, developing, creating, adapting, modifying, exchanging,
 26 offering, selling, distributing, providing, creating, importing, trafficking in, or using technology,
 27 products, services, devices, components, or parts thereof, that are primarily designed or produced
 28

1 for the purpose of circumventing technological measures and/or protection afforded by
 2 technological measures that control access to craigslist's copyrighted website and/or portions
 3 thereof, and from inducing, encouraging, causing or materially contributing to any other person or
 4 entity doing the same;

5 (g) Accessing or attempting to access craigslist's computers, computer
 6 systems, computer network, computer programs, and data, without authorization or in excess of
 7 authorized access, including, but not limited to, creating accounts or posting content on the
 8 craigslist website, and from inducing, encouraging, causing, materially contributing to, aiding or
 9 abetting any other person or entity to do the same;

10 (h) Manufacturing, developing, creating, adapting, modifying, exchanging,
 11 offering, selling, distributing, providing, importing, trafficking in, purchasing, acquiring,
 12 transferring, marketing or using any program, device, or service designed to provide an
 13 automated means of accessing craigslist's website, automated means of creating craigslist
 14 accounts, or automated means of posting ads or other content on craigslist's website, including,
 15 but not limited to, any program, device, or service that is, in whole or in part, designed to
 16 circumvent security measures on the craigslist website;

17 (i) Repeatedly posting the same or similar content on craigslist, posting the
 18 same item or service in more than one category on craigslist, posting the same item or service in
 19 more than one geographic area on craigslist, and from inducing, encouraging, causing, assisting,
 20 aiding, abetting or contributing to any other person or entity doing the same;

21 (j) Posting ads on behalf of others, causing ads to be posted on behalf of
 22 others, and accessing craigslist to facilitate posting ads on behalf of others;

23 (k) Using, offering, selling or otherwise providing a third-party agent, service,
 24 or intermediary to post content to craigslist;

25 (l) Misusing or abusing craigslist, the craigslist website and craigslist services
 26 in any way, including, but not limited to, ^{by} violating the craigslist TOU;
 27 [^]
 28

(m) Accessing or using craigslist's website for any commercial purpose proscribed by the craigslist TOU; and

~~whatsoever, and~~

C. Defendants shall transfer to craigslist within 10 days of receiving notice of this Order the domain names "cladgenius.com," "pvagenius.com," "pvasuperman.com" and all other domain names owned, operated, or registered by Defendants that contain "cl", "craig" or "craigslist" or that are used to offer or sell craigslist telephone verified accounts, CAPTCHA solving products or services, or products or services that permit the posting of content on craigslist without each ad being manually posted by the user. craigslist may serve Defendants with notice of this Order by email. If Defendants do not comply with the Order within 10 days of receiving notice of this order the registrars for the domains shall transfer the domains to craigslist.

D. Judgment is entered against defendants Christopher Meyer, Sean Meyer and XLR Publications, Inc. in the amount of ^{\$1,844,409.80}~~\$5,832,659.80~~. This represents:

1. Statutory damages for violations of the Digital Millennium Copyright Act, ^{\$1,709,250}~~\$5,697,500~~; 17 U.S.C. § 1201, in the sum of ^{\$1,709,250}~~\$5,697,500~~;

2. Reasonable attorneys' fees and costs in the amount of \$135,159.80.

Dated: February 11, 2011


Honorable Maxine M. Chesney

Presented by:

PERKINS COIE LLP

By: /s/Brian Hennessy

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